

ALERT

Colombian Wealth Tax – New Formal Obligations Imposed to Foreign Investors

A Series of Updates Could Significantly Affect Who Must File a Wealth Tax Return

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HIGHLIGHTS:

- » Foreign investors in Colombia may be affected by new formal obligations in the nation's wealth tax laws that may require they file a return.
- » Foreign investors whose net equity in Colombia was worth COP\$1.000.0000.000 (approximately USD\$392,156.00) or more on Jan. 1, 2015, must file a wealth tax return

Executive Summary

- » Foreign investors whose net equity in Colombia was worth COP\$1.000.0000.000 (approximately USD\$392,156.00) or more on Jan. 1, 2015, must file a wealth tax return.¹ This obligation must be fulfilled in May of the current year, according to the Tax Identification Number (NIT) of the taxpayer.
- » Regardless of the above, in order to calculate the taxable base for the wealth tax, it is possible to subtract from the net equity, among other items the net equity value of shares, participation and/or membership interests held in Colombian companies.
- » For foreign legal entities, the wealth tax accrues for three taxable years (2015, 2016 and 2017) and for each year, it is mandatory to file a wealth tax return as well as calculate and pay the tax due (if applicable).
- » Prior to filing a wealth tax return, foreign legal entities must obtain a Tax Registry ID (RUT) before the Colombian tax authorities (DIAN). By means of this procedure, a NIT is assigned to the taxpayer.
- » Also, foreign legal entities must appoint a Colombian resident as their proxy through a power of attorney in order to file and sign the wealth tax return on behalf of the foreign legal entity. This return must be signed by a Colombian accountant as well. The authorized officers of the foreign entity are not required to obtain a RUT.
- » Currently, the DIAN is preparing a unified formal opinion (equivalent to a ruling) regarding the wealth tax formal obligations. The ruling is intended to clarify among other rules: (i) available payment mechanisms for foreign entities to pay the wealth tax; and (ii) whether it is necessary to file a tax return when there is no tax due or if the equity held in Colombia is comprised exclusively of shares in local entities.

Wealth Tax – Formal Rules

- » **Taxable base:** For legal entities, the taxable base is obtained by deducting any outstanding liabilities from the gross assets held on Jan. 1 of any of the following years – 2015, 2016 and 2017. Those taxpayers that – as a result of the aforementioned calculation – register a taxable base equal or higher than COP\$1.000.000.000 (approximately USD\$392,156), will have the obligation of filing a wealth tax return before the DIAN.

Despite the above and in order to calculate the tax due, it is possible to subtract from the taxable base, among other items, the net equity value of shares, participation or rights held in Colombian entities directly or indirectly through legal vehicles such as trusts, funds and pensions funds.

- » **Rate:** The tax is determined by ranges, with a gradual and progressive decrease of the marginal rate and the total tax per range during the following years for which the tax is applied. For fiscal year 2015, the following ranges and rates apply:

WEALTH TAX			
Range of taxable base in pesos		Rate	Tax Due
Lower Limit	Upper Limit		
>\$0	<\$2.000.000.000	0,20%	(Taxable base) * 0,20%
≥\$2.000.000.000	<\$3.000.000.000	0,35%	((Taxable base – \$2.000.000.000)*0,35%) + \$4.000.000
≥\$3.000.000.000	<\$5.000.000.000	0,75%	((Taxable base – \$3.000.000.000)*0,75%) + \$7.500.000
≥\$5.000.000.000	And higher	1,15%	((Taxable base – \$5.000.000.000)*1,15%) + \$22.500.000

- » **Due Dates:** For fiscal year 2015 the due dates to file the wealth tax return and pay the relevant tax due may differ for each legal entity based on the last digit of its NIT, as stated below:

Filing of the return and payment of the first installment		
Last digit of the NIT	Date	
1	M	12
2	A	13
3	Y	14
4		15

Payment of the second installment		
Last digit of the NIT	Date	
1	S	8
2	E	9
3	P	10
4	T	11

5		19
6		20
7		21
8		22
9		25
0		26

5	E	14
6	M	15
7	B	16
8	E	17
9	R	18
0		21

Taxpayers of the wealth tax are required to file the return via the DIAN's webpage, using the digital signature mechanism.

» Other relevant issues:

- The wealth tax cannot be offset against any other tax.
- The wealth tax is not payable through advanced estimated payments.
- The Colombian government has not established the due dates for fiscal years 2016 and 2017.
- For fiscal years 2016 and 2017, the wealth tax might be calculated considering a presumptive taxable base, depending on the flow of the taxpayers' net equity of the relevant year in relation to the amount calculated for fiscal year 2015.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

Notes

¹ Applying a foreign exchange rate of \$2.550.